

ARKANSAS SUPREME COURT

No. CR 07-104

JERRY JAMES ELLIS

Appellant

v.

STATE OF ARKANSAS

Appellee

Opinion Delivered March 22, 2007

PRO SE MOTION FOR EXTENSION
OF TIME TO FILE APPELLANT'S
BRIEF [CIRCUIT COURT OF
PULASKI COUNTY, CR 2004-1456,
HON. JOHN W. LANGSTON, JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

Appellant Jerry James Ellis was convicted of rape, burglary and terroristic threatening and sentenced to an aggregate term of life imprisonment. We affirmed. *Ellis v. State*, 364 Ark. 538, ___ S.W.3d ___ (2006). This court's mandate was issued on January 31, 2006.

On April 14, 2006, appellant filed in the trial court a *pro se* petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1, seeking to vacate or modify the judgment. The petition was denied on July 25, 2006, on the grounds that it was not timely filed.¹ No appeal was taken from the order. On September 20, 2006, appellant filed a motion asking the trial court to reconsider its July 25, 2006, ruling. The motion was denied on October 10, 2006, and appellant has lodged an appeal

¹Petitions under Rule 37.1 must be filed in the trial court within sixty days of the date the appellate court mandate was issued. Ark. R. Crim. P. 37.2. The time limits set out in Rule 37.2 are jurisdictional in nature, and the circuit court may not grant relief on an untimely petition. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989). Appellant filed his petition seventy-three days after the mandate in his case was issued.

from that order in this court. He now seeks an extension of time to file the appellant's brief.

As we find no merit to the appeal, the appeal is dismissed. The motion for extension of time is moot. This court has consistently held that an appeal from the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (per curiam); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (per curiam).

The timeliness of the original petition is not at issue in the instant appeal. The appeal is from the order that denied the motion for reconsideration, and the sole issue is whether the court erred in denying that motion. Arkansas Rule of Criminal Procedure 37.2(d) provides that the decision of the court in any proceeding under the rule is final when the judgment is entered and that no petition for rehearing shall be considered.² Accordingly, pursuant to Rule 37.2(d), the circuit court lacked jurisdiction to address the allegations contained in the motion for reconsideration, and the court was right to deny it. *Shoemate v. State*, 339 Ark. 403, 407 S.W.3d 446 (1999) (per curiam).

Appeal dismissed; motion moot.

²A petitioner under the rule may file a motion seeking a ruling on a specific issue raised in the Rule 37.1 petition and not addressed by the court in its order. *Matthews v. State*, 333 Ark. 701, 970 S.W.2d 289 (1998) (per curiam). The motion for reconsideration filed by appellant in the instant appeal did not seek a ruling on an omitted issue.